

ONE HUNDRED THIRD LEGISLATURE - SECOND SESSION - 2014

COMMITTEE STATEMENT

LB775

Hearing Date: Friday January 24, 2014
Committee On: Judiciary
Introducer: Seiler
One Liner: Provide for disclosure of a decedent's financial information as prescribed

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 7 Senators Ashford, Christensen, Coash, Davis, Lathrop, McGill, Seiler
Nay:
Absent:
Present Not Voting: 1 Senator Chambers

Proponents:	Representing:
SEN. LES SEILER	INTRODUCER
TOM FITCHETT	NEBRASKA BAR ASSOCIATION
ROBERT HALLSTROM	NE BANKERS ASSN

Opponents:	Representing:
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Neutral:	Representing:
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Summary of purpose and/or changes:

LB775 provides an exemption to rule under 8-1401(1) that no persons organized under the various business acts shall be required to disclose any records or information, financial or otherwise, that it deems confidential concerning its affairs or the affairs of any person with which it is doing business to any person, party, agency, or organization.

The exemption to disclosure commences after the death of the decedent and applies to a person (a) indebted to the decedent or a person (b) having possession of personal property and other specified items belonging to the decedent. The exemption does not apply to real property or to the contents of a safety-deposit box.

The process and requirements are summarized as follows:

Upon death, the person having possession of the property above, shall provide the value of the indebtedness or property on the date of death and the names of the known or designated beneficiaries of the property to persons who are:

(A) an heir at law of the decedent, (B) a devisee of the decedent or a person nominated as a personal representative in a will of the decedent, or (C) an agent or attorney authorized in writing with a proscribed affidavit

The affidavit shall have:

the decedent's personal information, that disclosure is necessary to determine whether the decedent's estate can be administered under specified provisions in order to assist in the determination of the inheritance tax in an estate that is not subject to probate or to assist a conservator or guardian in the preparation of a final accounting subsequent to the death of the decedent; other persons with superior rights; that all the information is true; and that there is no petition or application for a personal representative.

The person who receives the affidavit, shall provide the information within five (5) business days

Lastly, LB775 provides immunity for the person who acts in good faith reliance on an affidavit for the disclosure of the requested information.

Explanation of amendments:

The bill would provide that the custodian of a safe deposit box allow access to the box by specified persons in order to determine if the box contains an instrument that appears to be an original will of the decedent, a deed to a burial plot, or burial instructions where the decedent, at the time of his or her death, was a sole or last surviving joint lessee of the safe deposit box. AM2038 was adopted by the committee. LB988 was amended into LB775 in committee and is a part of AM2038.

Sec 6: would provide that Section 2 shall be known and cited as a part of the Nebraska Probate Code.

Sec 7: would adopt a new subdivision to define terms for the purposes of the act. "Custodian" would be defined as a bank, savings and loan association, credit union, or other institution acting as a lessor of a safe deposit box. "Representative of a custodian" would be defined as an authorized officer or employee of a custodian.

The bill would provide that the custodian allow access to a safe deposit box by specified persons in order to determine if the box contains an instrument that appears to be an original will of the decedent, a deed to a burial plot, or burial instructions where the decedent, at the time of his or her death, was a sole or last surviving joint lessee of the safe deposit box.

The bill would give the following persons access: (i) a person who presents an affidavit that the person reasonably believes that he or she is the (a) heir at law, (b) a devisee or a person nominated as a personal representative as shown in a photocopy of a will which is attached to the affidavit, or (c) if the individual is an agent or attorney authorized in writing; or (ii) a person who, under the terms of the safe deposit box or power of attorney at the time of the decedent's death, was legally permitted to enter the safe deposit box.

For the persons granted access above, but do not have a key to the box, the bill would provide that the custodian may open the box by 'any means necessary' at the request and expense of the person granted access. The custodian may also require the person granted access to obtain a court order at his or her own expense. After the box is opened, the custodian shall retain the contents of the box other than a purported will, deed to a burial plot, and burial instructions in a secure location. If the box contains a will, the custodian shall deliver the purported will as described below and if the box contains a deed to a burial plot and burial instructions that are not a part of a purported will, the person granted access may remove them as instructed below and the custodian shall not prevent their removal.

The bill would provide that a representative of the custodian be present during the entry of the safe deposit box.

The bill would provide the following elements in the affidavit: (a) that the sole or last surviving lessor of the box has died and his or her date of death along with a copy of the death certificate; (b) if the affidavit is submitted by an attorney or agent of the affiant, that such appointment is for the purpose of accompanying the opening of the safe deposit box. However, in lieu of this, the appointment shall accompany the affidavit and, (c) that the affiant is (i)(A) an heir at law, or (B) is reasonably thought to be a devisee of the decedent based on the provisions of a will, or (C) is reasonably thought to be nominated as personal representative pursuant to the terms of a will; (ii) swears or affirms that all statements are true and material and acknowledges that any false statement may subject the person to penalties relating to perjury; and (iii) has no knowledge of an application or petition for the appointment of a personal representative pending or granted in any jurisdiction.

The bill would provide that if a purported will is found, the representative of the custodian remove the purported will and mail or personally deliver the purported will to the clerk of the county court in which the decedent was a resident or to the clerk where the box was located if unable to determine the decedent's county of residence.

The bill would provide that if the box contains a deed to a burial plot or burial instructions which are not a part of the

purported will, the requesting party may remove or instruct the custodian to copy at the expense of the requesting party. The bill would not limit the right of a personal representative, special administrator or successor to have access to the box and unless limited by the box lease, the surviving co-lessee may continue to enter the box.

Brad Ashford, Chairperson